

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BARBARA J. P.,

Plaintiff,

v.

Civil Action No.
6:24-CV-458 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

OFFICE OF PETER ANTONOWICZ
148 West Dominick Street
Rome, NY 13440

PETER ANTONOWICZ, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
6401 Security Boulevard
Baltimore, MD 21235

VERNON NORWOOD, ESQ.
KATHRYN POLLACK, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the

Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was conducted in connection with those motions on May 22, 2025, during a telephone conference held on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination did not result from the application of proper legal principles and is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court’s oral bench decision, a transcript of which is attached and incorporated herein by reference, it is hereby

ORDERED, as follows:


- 1) Plaintiff’s motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner’s determination that plaintiff was not

¹ This action is timely, and the Commissioner does not argue otherwise. It has been treated in accordance with the procedures set forth in the Supplemental Social Security Rules and General Order No. 18. Under those provisions, the court considers the action procedurally as if cross-motions for judgment on the pleadings have been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.

3) The matter is hereby REMANDED to the Commissioner, without a directed finding of disability, for further proceedings consistent with this determination.

4) The clerk is respectfully directed to enter judgment, based upon this determination, remanding the matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.



David E. Peebles
U.S. Magistrate Judge

Dated: June 13, 2025
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
BARBARA JO P.,

Plaintiff,

vs.

6:24-CV-458

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

DECISION

held on May 22, 2025 by teleconference

before the HONORABLE DAVID E. PEEBLES

United States Magistrate Judge

APPEARANCES (by telephone)

For Plaintiff: PETER W. ANTONOWICZ, ESQ.
148 West Dominick Street
Rome, NY 13440

For Defendant: SOCIAL SECURITY ADMINISTRATION
Office of the General Counsel
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1 THE COURT: Let me begin by thanking both of you
2 for excellent presentations.

3 Before I address the merits of the case, I wanted
4 to broach the subject of consent. When this case was
5 originally filed, it was assigned to Magistrate Judge Daniel
6 J. Stewart. The consent form which was filed on March 22 --
7 it was filed on April 1, 2024, signed on March 22, 2024,
8 docket number 3, specifically consented to his jurisdiction.
9 The matter has since been transferred to me.

10 I wanted to make sure, Attorney Antonowicz, that
11 your client does consent to my hearing and determining the
12 matter with direct appeal to the United States Court of
13 Appeals for the Second Circuit.

14 MR. ANTONOWICZ: Yes, your Honor.

15 THE COURT: Thank you.

16 Plaintiff has commenced this action pursuant to 42,
17 United States Code, Section 405(g) to challenge a partially
18 unfavorable determination by the Commissioner of Social
19 Security. The background is as follows.

20 Plaintiff was born in August of 1965 and is
21 currently 59 years of age. She was 52 at the alleged onset
22 of her disability on March 15, 2018. Plaintiff stands 5-foot
23 4-inches in height and has weighed at various times between
24 206 and 276 pounds. Plaintiff lives in Remsen, New York, in
25 a house with her husband. Plaintiff has a high school degree

1 and two years of college at Mohawk Valley Community College
2 having achieved an Associate's Degree. She was in regular
3 classes while in school. Plaintiff drives. Plaintiff
4 stopped working on March 5, 2018. When working she was a
5 cable television technician from August of 1996 until March
6 of 2018.

7 Physically, plaintiff suffers from lumbar back
8 pain, leg pain, tremors, high blood pressure, diabetes,
9 obesity, and vision impairment. The diabetes is Type 2
10 diabetes. Plaintiff injured her back at work on March 5,
11 2018 and went out on Workers' Compensation. She has also had
12 right shoulder surgery in October of 2016, eye surgery in
13 April of 2017. And I note that Dr. Kirkpatrick on May 10,
14 2018 noted that plaintiff suffers from a 25 percent loss of
15 her right arm. She has undergone various testing of her
16 back, including an X-ray on March 13, 2018 which revealed
17 mild degenerative arthritic spurring of the lumbar spine, an
18 EMG and nerve conduction study on September 27, 2018 that
19 showed evidence of an active bilateral L5 radiculopathy, an
20 MRI on March 22, 2019 that showed that the very slight
21 degenerative changes as enumerated above are stable since the
22 previous examination, no new central or neural foraminal
23 stenosis, and another EMG, a nerve conduction study on
24 November 21, 2019, again showing evidence of chronic
25 bilateral L4 and L5 radiculopathy, an MRI on June 11, 2020,

1 showing no fracture but mild to moderate spondylosis of the
2 lumbar spine and disc herniation of the L5/S1 without canal
3 stenosis, nerve conduction study, and an EMG on December 16,
4 2020, showing electrophysiological evidence of chronic
5 bilateral radiculopathy, and an MRI of the lumbar spine on
6 June 3, 2021, revealing subtle sub-ligamentous protrusion at
7 L5/S1.

8 The plaintiff has a fairly wide range of daily
9 activities. She showers three times a week, can dress,
10 groom, watches television, she gardens, she shops with her
11 husband every two weeks, does some dusting, some laundry one
12 time a week. She does some cooking five to six times a week.
13 That's at 1087 of the Administrative Transcript. She sews,
14 she walks, she swims, she walks her dog. She does state on
15 August 18, 2021, that she walks daily. At 1485 it indicates
16 she can walk a half mile. At 523 there is an indication that
17 she feels like she can walk one mile but only stand for 15
18 minutes. That's on May 10, 2018 that statement was made,
19 578. The record is a little equivocal as to whether or not
20 she rides a motorcycle and, if so, how often. At 332 and 316
21 she states she cannot. At 1312 there was an indication she
22 has difficulty with tremors and shifting gears. She also
23 does outdoor photography, that's at 645 of the Administrative
24 Transcript.

25 Procedurally, plaintiff applied for Title II

1 benefits protectively on December 2, 2020, alleging an onset
2 date of March 5, 2018. At 298 she alleged disability based
3 on bulging disc at L5/S1, nerve pain, carpal tunnel syndrome,
4 high blood pressure, Type 2 diabetes, and altered depth
5 perception. A hearing was conducted on February 15, 2023 by
6 Administrative Law Judge Elizabeth Koennecke to address
7 plaintiff's application for benefits. A second hearing was
8 conducted with a vocational expert on April 17, 2023 by ALJ
9 Koennecke. An unfavorable decision -- I'm sorry, a partially
10 favorable decision was issued on April 27, 2023, finding that
11 plaintiff was disabled beginning August 25, 2020, but not
12 before. On January 31, 2024 that decision became a final
13 determination of the Agency, when the Social Security
14 Administration Appeals Council denied plaintiff's request for
15 review. This action was commenced on April 1, 2024, and is
16 timely.

17 In her decision, ALJ Koennecke applied the familiar
18 five-step sequential test for determining disability. She
19 noted that plaintiff had not engaged in substantial gainful
20 activity since March 5, 2018. She also noted in passing that
21 plaintiff has an insured status or did through December 31,
22 2023.

23 At step two, she concluded that plaintiff does
24 suffer from severe impairments that place more than minimal
25 limitations on her ability to perform work functions,

1 including obesity and degenerative disc disease of the lumbar
2 spine. She rejected several other conditions including her
3 right shoulder, high blood pressure, glaucoma, diabetes, hand
4 and finger tremors, and carpal tunnel syndrome as not being
5 severe within the meaning of the Social Security Act.

6 At step three, ALJ Koennecke concluded that
7 plaintiff's conditions do not meet or medically equal any of
8 the listed presumptively disabling conditions set forth in
9 the Commissioner's regulations, specifically considering
10 listings 1.15 and 1.16. The ALJ went on to formulate a
11 residual functional capacity, or RFC, finding that plaintiff
12 is capable, notwithstanding her impairments, of performing
13 light work as defined in the regulations except she can lift
14 25 pounds, carry 15 pounds, and perform no standing for more
15 than 15 minutes continuously, no walking for more than 0.1
16 miles continuously, no pushing more than 35 pounds, no
17 pulling more than 25 pounds, no balancing activities that
18 require walking, and no crouching, stooping or crawling on
19 hands and feet.

20 At step four, applying that RFC ALJ Koennecke noted
21 that plaintiff is incapable of performing her past relevant
22 work as a cable television technician because it was
23 performed at the heavy exertional level.

24 At step five, ALJ Koennecke noted that plaintiff
25 was closely approaching advanced age and transitioned to

1 advanced age on August 25, 2020, and that under the
2 Medical-Vocational Guidelines, or the so-called grids, that
3 would direct a finding of disability after that date.

4 For the period prior to that date, ALJ Koennecke
5 found that plaintiff is capable of performing available work
6 in the national economy relying on the testimony of a
7 vocational expert who cited as examples office helper, ticket
8 taker, and garment sorter. The grid rule that applied
9 subsequent to August 25, 2020 is Grid Rule 202.06.

10 As you all know or you both know, the Court's
11 function in this case is limited to determining whether
12 correct legal principles were applied and the resulting
13 determination is supported by substantial evidence, which has
14 been described by the Second Circuit as an extremely
15 stringent standard. Substantial evidence means such
16 admissible and relevant evidence as a reasonable mind would
17 find sufficient to support a conclusion. *Brault v. Social*
18 *Security Administration Commissioner*, 683 F.3d 443. That
19 standard was later reiterated in *Schillo v. Kijakazi*, 31
20 F.4th 64 from 2022.

21 The contentions in this case by the plaintiff are
22 twofold. She challenges the evaluation by the Administrative
23 Law Judge of her reported symptoms and resulting limitations.
24 And secondly, she challenges the evaluation of the medical
25 opinion evidence in the record. I note that because of the

1 partially favorable determination, the relevant period in
2 this case is March 5, 2018 to August 24, 2020. As a backdrop
3 I also note that it is plaintiff's burden through step four
4 to establish her limitations. *Poupore v. Astrue*, 566 F.3d
5 303, Second Circuit 2009.

6 The first issue I want to address is evaluation of
7 medical opinions. In this case because the plaintiff's
8 application for benefits was filed after March 27, 2017, the
9 case is subject to amended regulations which took effect for
10 applications filed after that date, under which the
11 commissioner no longer defers to or gives any specific
12 evidentiary weight, including controlling weight, to any
13 medical opinions including those from medical sources, but
14 instead considers whether those opinions are persuasive by
15 primarily considering whether they are supported by and
16 consistent with the record in the case. 20 C.F.R. Section
17 404.1520(c). Importantly, an ALJ must articulate in his or
18 her determination as to how persuasive he or she finds all of
19 the medical opinions and explain how he or she considered the
20 supportability and consistency of those opinions. In that
21 description an articulation must be sufficient to permit
22 meaningful judicial review. I also note as on aside where
23 there is conflicting medical evidence in the record, in the
24 first instance it is for the Administrative Law Judge to
25 resolve any conflicts. *Veino v. Barnhart*, 312 F.3d 578 from

1 2002.

2 The first opinion in the record is from a nurse
3 practitioner whose name is illegible. It appears at 595 of
4 the Administrative Transcript. It is dated April 17, 2018,
5 which is shortly after plaintiff's alleged injury. It
6 indicates the nature of injury, low back pain with right
7 sciatica. It limits plaintiff to lifting not more than
8 20 pounds, which is somewhat inconsistent with the RFC.
9 Significantly, it also indicates, quote, "She cannot climb
10 ladders. The ladder restriction is permanent because she has
11 altered depth perception in the right eye." There is a
12 discussion of this opinion at page 21 of the Administrative
13 Transcript. The opinion was found not persuasive because,
14 one, it was rendered shortly after the claimant reported the
15 injury; two, it was not entirely supported by her subsequent
16 treatment notes; and three, it was inconsistent with the
17 functional capacity examination which we'll discuss shortly.

18 I find that there is error because there was
19 absolutely no discussion as to why the climbing ladder
20 restriction should not be included in the RFC. It's
21 indicated here that it is permanent. Plaintiff claimed
22 disability based on an altered depth perception and did have
23 surgery on her eyes. However, I also find that the error is
24 harmless. According to the Dictionary of Occupational
25 Titles, the positions of ticket taker, which is 344.667-010,

1 and office helper 239.567-010, and garment sorter 22.6877-014
2 all involve no climbing. Under climbing they all indicate
3 not present, activity or condition does not exist.

4 So while I find error, I find that that particular
5 error was harmless.

6 The next opinion discussed by ALJ Koennecke is from
7 Dr. Kevin Scott. It was in the form of an independent
8 medical examination made obviously under auspices of the
9 Workers' Compensation case. It appears at 644 to 647 of the
10 Administrative Transcript and it occurred or is dated
11 September 12, 2018. In it Dr. Scott indicates the following:
12 Her, meaning plaintiff, temporary work restrictions is she is
13 capable of working but in a sedentary capacity. No pushing,
14 pulling or lifting over 10 pounds. She needs to sit/stand as
15 needed. At this time I do not know how long the restrictions
16 will be for. The opinion was discussed by the ALJ at pages
17 21 to 22 and found not persuasive.

18 I would agree with the Administrative Law Judge
19 that because it is specifically opining on a temporary basis,
20 it is probably not persuasive. However, the other part of
21 the rationale that it was somewhat supported by examination
22 findings but inconsistent with the totality of the record in
23 my view is insufficient to allow for a meaningful judicial
24 review. There is no indication of in what manner it's
25 inconsistent with the record and what parts of the record

1 would be contrary to the opinion.

2 There is a reference by the Administrative Law
3 Judge to a functional capacity evaluation by a Therapist
4 Raymond Alessandrini. It is not in the record. There's no
5 explanation for why it is not. It is referenced several
6 times in the record, including 787 and 1219. It does seem to
7 support the RFC but the report is not available. There's no
8 meaningful discussion as to how Dr. Scott's opinion differs
9 from the functional capacity evaluation and prevents
10 meaningful judicial review. I find that that is error.

11 The next opinion is a series of opinions from
12 Dr. Richard Mutty, again who conducted an independent medical
13 examination of the plaintiff. The first occurred on April 2,
14 2019. It appears in the record at 648 to 652. And it limits
15 plaintiff to light work activity, with the 10 pound weight
16 lifting on an occasional basis. That's page 651.

17 The second is from December 11, 2019, and it
18 appears at 659 to 665. It limits plaintiff to occasional
19 lifting 10 pounds and occasional pushing and pulling 20
20 pounds, occasional standing and occasional walking, and never
21 climbing, kneeling or bending.

22 The third is from December 29, 2019 and it's at 656
23 to 657. It indicates: At the time of my prior examination,
24 I felt that her degree of disability was moderate to marked,
25 and since there has been no change in my recent examination

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1 of December 10, 2019, it is felt that at the time of that
2 examination her degree of disability would still be
3 considered moderate to marked.

4 The opinions are discussed together at page 22 of
5 the Administrative Transcript and found not to be persuasive.
6 The reasons given are as follows: Although they were
7 somewhat supported by examination findings, they were not
8 consistent with the totality of the record, including the
9 claimant's activities, the objective medical evidence, or her
10 functional capacity examination. Once again, I find that
11 discussion to be deficient and does not permit meaningful
12 judicial review because it does not provide any specifics.

13 The Administrative Law Judge next went on to
14 reference the functional capacity evaluation of Raymond
15 Alessandrini that occurred on apparently March 23, 2020. As
16 I indicated, it does not appear on the record; it is,
17 however, referenced at several locations including 787, 1108,
18 1219 and 1113. It tracks the residual functional capacity as
19 discussed at page 22 and found to be, quote, "most
20 persuasive." The various references indicate the following
21 regarding that examination, quote, "Ms. Palm is capable of
22 assuming a position in the medium strength category. Her
23 maximum lifting capacity is 25.0 pounds, and her maximum
24 carrying capacity is 15.0 pounds. According to the
25 Dictionary of Occupational Titles, the medium strength

1 category is defined as having the ability to lift 20 to
2 50 pounds and carry 10 to 25 pounds. She would have to
3 follow the following restrictions: No standing for more than
4 15 minutes continuously, no walking for more than 0.1 miles
5 continuously, no pushing more than 35 pounds, no pulling more
6 than 25 pounds, no balancing activities that require walking,
7 no crouching/stooping/crawling on hands and feet." The
8 opinion's found to be the most persuasive because it is
9 supported by actual testing, which is not in the record, and
10 generally consistent with other evidence of the record,
11 including negative objective medical evidence and the
12 claimant's activities as noted above, including the ability
13 to ride a motorcycle.

14 Once again, we have little information as to the
15 extent of the motorcycle riding and I don't find this is a
16 sufficient explanation to allow for meaningful judicial
17 review. We don't know anything about the testing, the report
18 of the testing that was done by this individual on a one-time
19 basis apparently and so in my view it's of very limited
20 value.

21 The next opinion is from Dr. Lee Saltzgaber. It
22 was dated March 8, 2021. It appears at 1086 to 1092 of the
23 Administrative Transcript. It was a consultative examination
24 arranged by the Agency. The medical source statement
25 contained in that report is as follows: The claimant will

1 have moderate limitations for prolonged sitting, standing,
2 walking, climbing stairs, lifting and carrying, reaching, and
3 handling.

4 There is a discussion of this opinion at page 22 of
5 the Administrative Transcript as found to be somewhat
6 persuasive but the reaching and handling limitations were
7 found not to be supported by treatment history and
8 activities. The sitting, reaching, and handling limitations
9 were inconsistent with other opinions of record. This is
10 supported by her ability to go to a gun range and shoot a
11 gun. Once again, I find that we do not know the extent of
12 reaching involved in shooting the gun. I think this is a
13 deficient explanation.

14 I note that plaintiff has had shoulder injury and
15 surgery. Dr. Kirkpatrick at 641 indicated 25 percent loss of
16 use of the right arm. Dr. Saltzgaber found moderate
17 limitation in reaching. And as we will see in a moment, the
18 prior administrative medical findings of Dr. Baronos and
19 Dr. D. Brauer also indicate limitations in reaching, which
20 brings me to those opinions.

21 The first is the opinion of Dr. V. Baronos from
22 April 7, 2021. The prior administrative medical finding
23 appears at page 66 through 81 of the Administrative
24 Transcript. It is discussed at pages 22 to 23 of the
25 Administrative Transcript and found to be somewhat

1 persuasive. It is clear and I acknowledge that prior
2 administrative medical findings can supply substantial
3 evidence supporting the determination. *Valdese-Capezio*
4 *versus Kijakazi*, 2023 WL 3573761, Second Circuit Court of
5 Appeals, 2023. The second is an opinion from Dr. D. Brauer
6 from June 23, 2021. It appears at pages 82 through 104, and
7 they're lumped together pretty much at pages 22 and 23 by the
8 Administrative Law Judge and found to be somewhat persuasive.
9 Significantly. Both of those contain limitations on
10 reaching.

11 Dr. Baronos's report at page 75 indicates reaching
12 in any direction limited, left in front and/or laterally,
13 left overhead. And the explanation given is as follows: Due
14 to limited range of motion of the left shoulder associated
15 with arthroscopy of the left shoulder completed in 2016, the
16 claimant is limited to occasional overhead and in front
17 and/or lateral reaching using the left arm as well as
18 occasional gross manipulation using the left arm.

19 Similarly, Dr. Brauer at page 97 contains a similar
20 limitation and bases it on Dr. Saltzgaber's opinion,
21 consultative opinion, showing moderate limitations for
22 reaching, and also indicates similarly due to limited range
23 of motion of the left shoulder associated with arthroscopy of
24 the left shoulder completed in 2016, the claimant is limited
25 to occasional overhead and in front and/or lateral reaching

1 using the left arm as well as occasional gross manipulation
2 of the left arm.

3 I find that the -- and I'll note that there is no
4 indication in the reports of the functional capacity
5 evaluation of Therapist Alessandrini, there is no indication
6 that it speaks to plaintiff's ability to reach.

7 So, in conclusion, I find insufficient explanation
8 for rejection of the partial -- or, partial rejection of the
9 nurse practitioner's opinion concerning climbing and the
10 opinions of Dr. Scott and Dr. Mutty regarding lifting, and
11 insufficient explanation for rejecting the reaching
12 limitation opined by Dr. Saltzgaber, Dr. Baronos and
13 Dr. Brauer. And I note that according to the Dictionary of
14 Occupational Titles all three of the positions cited by the
15 vocational expert in this case require frequent reaching. I
16 know that the Second Circuit has said that in *Camille v.*
17 *Colvin*, 652 F.App'x 25 from 2016, that when the regulations
18 regarding the evaluation of medical opinions are not
19 specifically followed and in the decision does not articulate
20 clearly supportability, consistency analyses, if a searching
21 record -- if a searching review of the record indicates that
22 the medical opinion regulations were followed, then the
23 decision can be upheld. I don't find that to be the case
24 here. I think that the discussion of the opinion evidence in
25 this case is woefully deficient and does not permit

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1 meaningful judicial review, and I further indicate and find
2 that there were errors committed and matters were not
3 included in the RFC that should have concerning climbing and
4 reaching.

5 So, in conclusion, I'll grant judgment on the
6 pleadings to the plaintiff. I don't find persuasive evidence
7 of disability during the relevant period that we've been
8 discussing, and I think the matter should be returned for a
9 fuller analysis of the record opinion evidence and, if
10 possible, someone should try to obtain and include in the
11 record the functional capacity evaluation report by the
12 Therapist Raymond Alessandrini.

13 Thank you both for excellent presentations. I hope
14 you have a good day.

15 *

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C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
Realtime Court Reporter, in and for the United States
District Court for the Northern District of New York,
do hereby certify that pursuant to Section 753, Title 28,
United States Code, that the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Eileen McDonough

EILEEN MCDONOUGH, RPR, CRR
Federal Official Court Reporter